REMARKS

Claims 1-29 were pending in this application prior to this amendment.

Claims 1-29 were rejected.

Claim 9 has been amended.

Claims 1-29, as amended, are now in this application.

Claim Objections:

Claim 9 was objected to because of the informalities noted by the Examiner.

Applicant has amended claim 9 to eliminate the problem noted by the Examiner.

Claim Rejections – 35 USC 103:

Claims 1-4, 7-25 and 28-29 were rejected under 35 USC § 103(a) as being unpatentable over Shaffer et al. (US 6,411,601) in view of Bauer (US006711129B1).

Reconsideration and allowance of claims 1-4, 7-25 and 28-29 is requested for the reasons explained below.

Each of applicant's claims involves setting or inputting a "CPU utilization threshold". Furthermore, each of applicant's claims involves taking some action (such as setting a flag so that calls are refused) when the CPU utilization value is above or equal to the CPU utilization threshold.

For example claim 1 calls for (in part) :

>"the processor setting a call deny flag when the present CPU utilization value is larger than the **CPU utilization threshold**; and

>the processor ......indicating refusal of the incoming call ...... without answering the incoming call when the deny flag is set" (emphasis added)

The Bauer reference specifically states at column 2 lines 36 and 37 that:
"the present invention does not rely on pre-determined threshold limits"

Thus, the Bauer reference specifically teaches away from the use of a "utilization threshold".

In the Shafer reference, when a resource required by a call is not available, the call is placed in a queue for that resource. The call is not refused without answering as is done with the invention claimed by the applicant.

In summary, neither the Shaffer nor the Bauer reference makes use of a "**utilization threshold**". Furthermore, neither the system shown in the Shaffer nor the system shown in Bauer refuses to accept a call when a utilization threshold is exceeded. The Shafer reference teaches that when a resource required by a call is not available, the call is placed in a queue for the particular resource. There is no teaching that a call should be refused when a threshold is exceeded. Bauer on the other hand specifically teaches away from the use of a pre-determined threshold.

In the Office Action dated 10/18/05, the examiner states that:
"the features upon which applicant relies (i.e. establishing a threshold) are not recited in the rejected claims"

First, applicant notes that claim 24 is a method claim and this claim recites the step of"
"setting a Central Processing Unit (CPU) utilization threshold"

Second, applicant submits that an applicant is entitled to recite elements in claims in terms of a means plus a function. In the claim 1, for example, a means is recited as a "processor", and the function involves receiving "a CPU utilization threshold".

Since neither the Shaffer reference alone or in view of the Bauer reference teaches the invention recited in claims 1-4, 7-25 and 28-29, reconsideration and allowance of claims 1-4, 7-25 and 28-29 is respectfully requested.

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Claims 5, 6, 26 and 27 were rejected under 35 USC § 103(a) as being unpatentable over Shaffer in view of Philips, as described above in claims 3 and 24, and further in view of Grewal (US 5,592,672).

First, applicant requests clarification of the above rejection. The rejection specifies
    "Shaffer in view of Philips, as described above in claims 3 and 24".
In the rejection of claim 3 and 24, there is no discussion of a Philips reference. It is also noted that in the paragraphs following the above rejection, the examiner discusses the Shaffer, Bauer and Grewal references, but there is not discussion of a Phillips reference.

The applicant assumes that the above rejection was intended to be:
    "Shaffer in view of Bauer, and further in view of Grewal (US 5,592,672)".

If the applicant's interpretation of the rejection is not correct, clarification of this rejection is respectfully requested.

The Shaffer and Bauer rejections were discussed above. The above discussion of these references applies equally to the rejection of claims 5, 6, 26 and 27 and is therefore incorporated into this discussion of this rejection.

The Grewal reference relates to a system for load balancing. The system is concerned with routing outgoing messages to multiple front end processors. Messages are placed in one of three queues and then routed to the front end processors to effect as close as possible an expected distribution.

There is no discussion in this reference of utilizing a "CPU utilization threshold" as recited in applicant's claims.

It is also noted that claims 5, 6, 26 and 27 are dependent claims. Thus these claims are patentable for the reasons discussed above relative to their parent claims.

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For the above reason, reconsideration and allowance of claims 5, 6, 26 and 27 is respectfully requested.

CONCLUSION: For the foregoing reasons, reconsideration and allowance of claims 1-29 of the application as amended is respectfully requested.

The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

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